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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.123 of 2019

National Insurance Company Ltd.
Through its Manager, having Branch
Office at 1st Floor Town Centre,
Bicholim, Goa-403504. ... Appellant

Versus

1. Shamba Narayan Dessai,
Son of late Narayan Dessai,
Age 62 years, retired servant.

2. Smt. Shilpa Shamba Dessai,
Wife of Shamba Dessai,
Age 63 years,
retired Government servent.

3. Miss Diksha Shamba Dessai,
Daughter of Shamba Dessai,
Age 17 years, Student.
(all residents of Residents of H.no.278,
Near Vithal Mandir, Talaulim,
Ponda-Goa.)

4. Shri Sayyed Nadaf,
Son of Zamalsab Nadaf,
Age 35 years, driver,
Resident of House No. 303,
Corlim Industrial Estate,
Corlim, IIhas Goa.

5. Shri Parekh Shirodkar,
Son of Vishnu Shirodkar,
Major in age, bus operator,

Resident of House No.198,
Phabu wada, Calangute,
Bardez Goa.

6. Shri Vishnu Khodginkar,
Son of Surya Khodginkar,
major in age, driver,
Resident of Pilgao,
Bicholim - Goa.

7. Shri Gaurish Govenkar,
Son of Tulsidas Govenkar,
Major in age, transport operator,
Resident of House No.9,
Sonarpeth, Bicholim-Goa.

8. Bajaj Allianz General Insurance
Co. Ltd., Mapusa, Bardez-Goa. … Respondents

Mr. Amey Kakodkar with Mr. Pankaj Shirodkar, Advocate *for the Appellant*.

Mr. J. Godinho, Advocate *for Respondent Nos.1,2 & 3.*

Mr. Shailesh Manohar Phadte, Advocate *for Respondent No.5.*

CORAM: M. S. SONAK, J.

DATE : 14th JULY 2022

ORAL JUDGMENT :

1. Heard Mr. Amey Kakodkar, who appears along with Mr. Pankaj Shirodkar for the Appellant, Mr. J. Godinho for respondents nos.1,2 & 3, and Mr. Shailesh Phadte for respondent no.5.

2. This appeal has been filed by the Appellant - Insurance Company challenging the judgment and award dated 30.08.2018 in Claim Petition No.43/2013.

3. Mr. Kakodkar submits that the Tribunal has erred in recording findings on rashness and negligence and determining the quantum of compensation.

4. In this case, there is no dispute that the Appellant–Insurance Company obtained no leave under Section 170 of the MV Act before the Tribunal.

5. Therefore, by following the law laid down by the Division Bench of this Court in ***I.C.I.C.I. Lombard General Insurance Co. Ltd., Amravati V/s. Surekha w/o. Prakash Ghurde and ors.***[1], this appeal will have to be dismissed as not maintainable.

6. However, Mr. Kakodkar, learned Counsel for the Appellant - Insurance Company, pointed out that in ***Oriental Insurance Ltd. V/s. Sangita Devi and Ors.***[2]. The Delhi High Court, relying upon the decision of the Hon'ble Supreme Court in ***United India Insurance Co. V/s. Sudha Rani,***[3] has held that

1 (2020) 2 Bom.CR 465

2 2016 SCC Online Del. 1221

3 Civil Appeal No.8654/2013 decided on 24.09.2013 once the insurance company is voluntarily impleaded as a party to the claim petition by the claimants, it can raise all defenses, including the defenses concerning the quantum of compensation. He submitted that despite best efforts, he was not in a position to obtain a copy of the decision of the Hon'ble Supreme Court in *Sudha Rani (supra).*

7. Mr. Kakodkar also referred to the decision of the Hon'ble Supreme Court in ***Bajaj Allianz General Insurance Co. Ltd. V/s. Kamala Sen***[4] , which according to him, holds that where the insurance company is impleaded as a party respondent, it can raise all contentions that are available to resist the claim. In addition, he pointed out that the Hon'ble Supreme Court held this in the case of ***United India Insurance Company Ltd. V/s. Shila Datta***[5].

8. Although the Division Bench of this Court in *I.C.I.C.I. Lombard General Insurance Co. Ltd. case (supra)* may not have referred to the decision of the learned Single Judge of the Delhi High Court in *Sangita Devi (supra)* or the decision of the Hon'ble Supreme Court that was referred to therein, the Division Bench, has considered the decisions of the Hon'ble Supreme

4 2014 ACJ 2396

5 (2011) 10 SCC 509

Court in ***National Insurance Company Limited V/s. Nicoletta Rohtagi***[6]***, United India Assurance Company Ltd. Vs. Bhushan Sachdev***[7]***, Shila Datta (supra), and Josephine James V/s. United India Insurance Company Limited***[8] and held that notwithstanding the reference made, the decisions in ***Nicoletta Rohtagi*** *(supra)* and ***Josephine James*** *(supra)* hold good and based upon the same, the appeal filed by the Insurance Company questioning the quantum of the compensation would not be maintainable in the absence of permission under Section 170(b) of the said Act.

9. Accordingly, this appeal is dismissed. However, dismissal of this appeal will not prevent the Appellant - Insurance Company from instituting any other proceedings if maintainable in law.

10. The Appellant – Insurance Company has deposited the awarded amount in this appeal. Mr. Godinho states that the claimants have withdrawn no amounts to date. Accordingly, leave is granted to withdraw an amount of ₹10,00,000/- forthwith. For this, the claimants will have to furnish identification documents

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6 (2002) 7 SCC 456

7 (2002) 2 SCC 265

8 (2013) 16 SCC 711

and bank details so that the Registry can transfer this amount of ₹10,00,000/- into their bank accounts directly.

11. However, leave is granted to withdraw the balance amount only **after six weeks** from today. Unless, of course, the Appellant – Insurance Company, in the meanwhile, secures restraint orders for such withdrawal.

12. The appeal is disposed of in the above terms. Accordingly, there shall be no orders for costs.

M. S. SONAK, J.

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2022.07.15 10:48:02 +05'30'